



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BL71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 34

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) submitted Amendment 34 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (CMP FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 34 to the CMP FMP would revise the acceptable biological catch (ABC), the annual optimum yield (OY), sector allocations, the stock and sector annual catch limits (ACL), recreational annual catch target (ACT), and the recreational bag and possession limits off the east coast of Florida for Atlantic migratory group king mackerel (Atlantic king

mackerel). For both Atlantic king mackerel and Atlantic migratory group Spanish mackerel (Atlantic Spanish mackerel), Amendment 34 would revise the landing fish intact provisions for the recreational sector. The purpose of Amendment 34 is to revise the catch limits based on a recent stock assessment and revise sector allocations for Atlantic king mackerel based on the best scientific information available, and to revise management measures for Atlantic king mackerel and Atlantic Spanish mackerel.

DATES: Written comments must be received on or before *[insert date 60 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on Amendment 34, identified by "NOAA-NMFS-2022-0108," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter "NOAA-NMFS-2022-0108" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mary Vara, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method,

to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 34, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at

<https://www.fisheries.noaa.gov/action/amendment-34-catch-level-and-allocation-adjustments-and-management-measures-atlantic-king>.

FOR FURTHER INFORMATION CONTACT: Mary Vara, telephone: 727-824-5305, or email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The

Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The South Atlantic Council and Gulf of Mexico Fishery Management Council (Gulf Council) prepared the CMP FMP that is being revised by Amendment 34. If approved, Amendment 34 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Under the CMP FMP, the South Atlantic and Gulf Councils jointly manage fishing for king mackerel and Spanish mackerel in Federal waters from Texas through New York (to the intersection point of Connecticut, Rhode Island, and New York). Atlantic king mackerel and Atlantic Spanish mackerel are managed under the CMP FMP in Federal waters of the Atlantic from New York to the Miami-Dade/Monroe County, Florida, boundary. The Atlantic migratory groups of king mackerel and Spanish mackerel are further divided into the northern and southern zones separated by a line extending from the North Carolina/South Carolina border.

The Magnuson-Stevens Act requires NMFS and regional fishery management councils prevent

overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights in this notice are in round and eviscerated weight combined, unless otherwise specified.

The most recent Southeast Data, Assessment and Review (SEDAR) stock assessment for Atlantic king mackerel was completed in April 2020 (SEDAR 38 Update 2020). The fishing year for Atlantic king mackerel is from March through February. The assessment update incorporated 5 years of additional data through the 2017-2018 fishing year (March 2017 through February 2018), and incorporated the revised estimates for recreational catch from the Marine Recreational Information Program Fishing Effort Survey (MRIP FES). The South Atlantic Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 38 Update (2020) at their April 2020 meeting and determined that the assessment was conducted using the best scientific information available and was adequate for determining stock status and supporting fishing

level recommendations. The findings of the SEDAR 38 Update (2020) indicated that Atlantic king mackerel was not overfished or undergoing overfishing.

Additionally, the findings of SEDAR 38 Update (2020) showed that recreational and commercial landings, and catch per unit effort, all showed an increasing trend in biomass. Based on the results of the SEDAR 38 Update (2020), the South Atlantic Council's SSC updated their Atlantic king mackerel catch level recommendations to increase harvest. The South Atlantic Council developed Amendment 34 in response to the results of SEDAR 38 Update (2020). However, as discussed further below, the current and proposed overfishing limits (OFL), ABCs, and ACLs, are not directly comparable because they are based on different assessments and the updated assessment includes changes in the recreational catch estimates based on new MRIP-FES methodology.

The South Atlantic Council intends that Amendment 34 would ensure catch limits are based on the best scientific information available such that overfishing does not occur for Atlantic king mackerel in the CMP fishery, while increasing social and economic benefits through sustainable and profitable harvest of Atlantic king mackerel and Atlantic Spanish mackerel.

Actions Contained in Amendment 34

For Atlantic king mackerel, Amendment 34 would revise the OFL, ABC, OY, stock ACL, sector ACLs, and the recreational ACT. Amendment 34 would also revise the recreational bag and possession limits for Atlantic king mackerel in the Exclusive Economic Zone (EEZ) off the east coast of Florida. In addition, Amendment 34 would modify the recreational requirement for Atlantic king mackerel and Atlantic Spanish mackerel to be landed with heads and fins intact.

Atlantic King Mackerel OFL and ABC

As implemented through Amendment 26 to the CMP FMP (82 FR 17387, May 11, 2017), the current OFL and ABC for Atlantic king mackerel are 15,200,000 lb (6,894,604 kg) and 12,700,000 lb (5,760,623 kg), respectively. The South Atlantic Council's choice of these catch limits are based on the recommendations of their SSC from the SEDAR 38 stock assessment (2014). The recreational landings estimates used in SEDAR 38 (2014) were generated using the Marine Recreational Fishery Statistics Survey (MRFSS) estimation methods and the MRIP-Coastal Household Telephone Survey (CHTS).

In April 2020, the South Atlantic Council's SSC reviewed the latest stock assessment SEDAR 38 Update (2020) and recommended new OFL and ABC levels based on the SEDAR 38 Update (2020). The assessment and

associated OFL and ABC recommendations from the SSC incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the MRFSS. As explained in Amendment 34, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden increase in fishing effort. Compared to MRIP CHTS, MRIP FES is considered a more reliable estimate of recreational fishing effort and more robust by the South Atlantic Council and Gulf Councils (Councils), their SSCs, and NMFS. The new OFL and ABC recommendations within Amendment 34 also represent the best scientific information available as determined by the South Atlantic Council's SSC and NMFS.

The OFL would be 33,900,000 lb (15,376,781 kg) for 2022-2023; 29,400,000 lb (13,335,616 kg) for 2023-2024; 26,300,000 lb (11,929,479 kg) for 2024-2025; 24,200,000 lb (10,976,935 kg) for 2025-2026; and

22,800,000 lb (10,341,906 kg) for 2026-2027 and subsequent years. The ABC would be 32,800,000 lb (14,877,830 kg) for 2022-2023; 28,400,000 lb (12,882,023 kg) for 2023-2024; 25,400,000 lb (11,521,246 kg) for 2024-2025; 23,300,000 lb (10,568,702 kg) for 2025-2026; and 21,800,000 lb (9,888,314 kg) for 2026-2027 and subsequent years.

Atlantic King Mackerel Annual OY and Stock ACL

As implemented through Amendment 26 to the CMP FMP (82 FR 17387, May 11, 2017), the current stock ACL (total ACL) and OY for Atlantic king mackerel are equal to the ABC of 12,700,000 lb (5,760,623 kg). In Amendment 34, the South Atlantic Council chose to specify OY for Atlantic king mackerel on an annual basis and set it equal to the stock ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv), and set these values equal to 95 percent of the ABC.

The revised annual OY and stock ACL would be 31,160,000 lb (14,133,938 kg) for the 2022-2023 fishing year; 26,980,000 lb (12,237,922 kg) for the 2023-2024 fishing year; 24,130,000 lb (10,945,184 kg) for the 2024-2025 fishing year; 22,135,000 lb (10,040,267 kg) for the 2025-2026 fishing year; and 20,710,000 lb (9,393,898 kg) for the 2026-2027 fishing

year and subsequent fishing years.

Atlantic King Mackerel Sector Allocations and ACLs

Amendment 34 would revise the recreational and commercial allocations for Atlantic king mackerel. The Atlantic king mackerel stock ACL is allocated at 62.9 percent to the recreational sector and 37.1 percent to the commercial sector. This allocation was established in 1985 through Amendment 1 to the CMP FMP, using the average proportion of landings for the longest time series where both recreational and commercial landings data were available (50 FR 34840, August 28, 1985). Applying this allocation to the current stock ACL for Atlantic king mackerel of 12,700,000 lb (5,760,623 kg) results in 8,000,000 lb (3,628,739 kg) to the recreational sector (recreational ACL) and 4,700,000 lb (2,131,884 kg) to the commercial sector (commercial ACL). In Amendment 34, the South Atlantic Council decided to retain the same sector allocation percentages of 62.9 percent for the recreational sector and 37.1 percent for the commercial sector and apply this allocation to the new stock ACL, which incorporates the revised MRIP-FES estimates for recreational catch. The Council determined that this allocation would be fair and equitable to both the recreational and commercial sectors because it would allow both sectors room to expand their harvest

without risking either sector meeting or exceeding their sector annual catch limit.

Amendment 34 would revise the recreational ACLs to be 19,599,640 lb (8,890,247 kg) for the 2022-2023 fishing year; 16,970,420 lb (7,697,653 kg) for the 2023-2024 fishing year; 15,177,770 lb (6,884,521 kg) for the 2024-2025 fishing year; 13,922,915 lb (6,315,328 kg) for the 2025-2026 fishing year; and 13,026,590 lb (5,908,762 kg) for the 2026-2027 fishing year and subsequent fishing years. The South Atlantic Council acknowledged that the recreational sector has not met their quota in recent years but determined that the increase in poundage for the recreational sector may result in positive social benefits associated with the potential for increased harvest. The recreational sector does not have in-season accountability measures (AMs) in place but does have post-season AMs to address any overages of the recreational ACL. However, based on the new MRIP-FES recreational landings, none of the proposed recreational ACLs are expected to be reached.

Amendment 34 would revise the commercial ACLs to be 11,560,360 lb (5,243,691 kg) for the 2022-2023 fishing year; 10,009,580 lb (4,540,269 kg) for the 2023-2024 fishing year; 8,952,230 lb (4,060,663 kg) for the 2024-2025 fishing year; 8,212,085 lb (3,724,939 kg)

for the 2025-2026 fishing year; and 7,683,410 lb (3,485,136 kg) for the 2026-2027 fishing year and subsequent fishing years. Similar to the recreational sector, the commercial sector has not met their quota in recent years. The South Atlantic Council determined that the increase in poundage for the commercial sector may also result in positive social benefits associated with the potential for increased harvest. The commercial sector for Atlantic king mackerel has in-season AMs in place to prevent the commercial ACL from being exceeded and post-season AMs, based on stock status, to implement a commercial quota reduction in the event the stock ACL is exceeded. However, based on commercial landings for the fishing years of 2015-2016 through 2019-2020, none of the proposed commercial ACLs are expected to be reached.

Atlantic King Mackerel Commercial Zone ACLs

In addition to sector allocations, the commercial sector is divided into a northern and southern zone, with the commercial ACL further allocated between the two zones. The South Atlantic Council decided not to modify those zone allocations in Amendment 34 for Atlantic king mackerel, based on recommendations from their Mackerel Cobia Advisory Panel (AP) that the current zone allocations are functioning well. The northern zone (from the New York/Connecticut/Rhode

Island line to the North Carolina/South Carolina line) is allocated 23.04 percent of the commercial ACL and the southern zone (North Carolina/South Carolina line to the Miami-Dade/Monroe County line, Florida) is allocated 76.96 percent of the commercial ACL. In addition, there is an allowed incidental commercial harvest of Atlantic king mackerel by purse seine gear that is limited to 0.40 million lb (0.18 million kg) per fishing year. The current commercial sector ACL zone allocations and the purse seine allocation were not changed in Amendment 34.

The current northern zone commercial quota for king mackerel is 1,082,880 lb (491,186 kg). Based on the revised stock and commercial ACLs in Amendment 34, the commercial northern zone ACL (quota) would be 2,663,507 lb (1,208,146 kg) for the 2022-2023 fishing year; 2,306,207 lb (1,046,078 kg) for the 2023-2024 fishing year; 2,062,594 lb (935,577 kg) for the 2024-2025 fishing year; 1,892,064 lb (858,226 kg) for the 2025-2026 fishing year; and 1,770,258 lb (802,976 kg) for the 2026-2027 and subsequent fishing years.

The current southern zone commercial ACL (quota) is 3,617,120 lb (1,640,698 kg). The southern zone commercial ACL (quota) in Amendment 34 would be 8,896,853 lb (4,035,545 kg) for the 2022-2023 fishing year; 7,703,373 lb (3,494,191 kg) for the 2023-2024

fishing year; 6,889,636 lb (3,125,086 kg) for the 2024-2025 fishing year; 6,320,021 lb (2,866,713 kg) for the 2025-2026 fishing year; and 5,913,152 lb (2,682,161 kg) for the 2026-2027 and subsequent fishing years. The proposed revised commercial northern and southern zone ACLs for Atlantic king mackerel are all greater than the observed landings in recent years. Based on the average commercial landings from 2015-2016 through 2019-2020, future landings would be expected to continue to be less than the proposed commercial zone ACLs, and are not expected to be constraining on harvest or alter fishing activity.

*Atlantic King Mackerel Commercial Southern Zone
Seasonal Quotas*

The commercial fishing year for Atlantic king mackerel is March through February, and the commercial ACL for the southern zone is divided between two seasons. Season 1 is March 1 through September 30, and Season 2 is October 1 through the end of February. Season 1 is allocated 60 percent of the Atlantic king mackerel commercial ACL for the southern zone and Season 2 is allocated 40 percent. The current quota for Season 1 is 2,170,272 lb (984,419 kg) and the quota for Season 2 is 1,446,848 lb (656,279 kg).

Based on the revised stock, commercial, and commercial southern zone ACLs in Amendment 34, the

Atlantic king mackerel commercial southern zone quota for Season 1 would be 5,338,112 lb (2,421,327 kg) for the 2022-2023 fishing year; 4,622,024 lb (2,096,515 kg) for the 2023-2024 fishing year; 4,133,782 lb (1,875,052 kg) for the 2024-2025 fishing year; 3,792,012 lb (1,720,028 kg) for the 2025-2026 fishing year; and 3,547,891 lb (1,609,296 kg) for the 2026-2027 fishing year and subsequent fishing years. The commercial southern zone quota for Season 2 would be 3,558,741 lb (1,614,218 kg) for the 2022-2023 fishing year; 3,081,349 lb (1,397,676 kg) for the 2023-2024 fishing year; 2,755,854 lb (1,250,034 kg) for the 2024-2025 fishing year; 2,528,008 lb (1,146,685 kg) for the 2025-2026 fishing year; and 2,365,261 lb (1,072,864 kg) for the 2026-2027 fishing year and subsequent fishing years. The proposed commercial southern zone seasonal quotas for Atlantic king mackerel are all greater than the observed landings in recent years. Based on the average landings from 2015-2016 through 2019-2020, landings would be expected to continue to be less than the proposed commercial southern zone seasonal quotas, and are not expected to be constraining on harvest or alter fishing activity.

Atlantic King Mackerel Recreational ACTs

The Atlantic king mackerel recreational ACT was first established in Amendment 18 to the CMP FMP (76

FR 82057, December 29, 2011) using the equation $\text{recreational ACL} \times [(1 - \text{Proportional Standard Error (PSE)}) \text{ or } 0.5, \text{ whichever is greater}]$. Recreational ACTs for Atlantic king mackerel are utilized in triggering the post-season recreational AMs. For the Atlantic king mackerel post-season AM, if recreational landings exceed the ACL, and the sum of the commercial and recreational landings exceed the stock ACL, a reduced bag limit would be implemented the following fishing year by the amount necessary to ensure the recreational landings may achieve the recreational ACT, but do not exceed the recreational ACL.

Additionally, if the sum of the commercial and recreational landings exceeds the stock ACL and Atlantic king mackerel are overfished, the recreational ACL and ACT may be reduced for the following year by the amount of any recreational sector overage in the prior fishing year. Because the post-season recreational AM has not been triggered in the past, and the SEDAR 38 Update (2020) indicates that the Atlantic king mackerel is not overfished, sector ACLs and the recreational ACT can be increased without having negative effects on the sustainability of the stock and are not expected to trigger post-season recreational AMs. In Amendment 18 and past CMP amendments, the South Atlantic Council has chosen to

use the 5-year average PSE because it better represents the precision of recent catch estimates than the 3-year average. The current recreational ACT of 7,400,000 lb (3,356,584 kg) is derived from the current ABC and recreational ACL. Amendment 34 would maintain the formula for determining the recreational ACTs, but the PSE values used in the formula have been updated to reflect the revised recreational landings that are based on the MRIP's newer FES method, and the revised stock ACL and recreational ACL. The 5-year average PSE for the recreational data was 0.137. Using the current formula to calculate the recreational ACT, the resulting recreational ACT would be equal to the recreational ACL multiplied by $(1-0.137)$, or 0.863, setting the recreational ACT at 86.3 percent of the recreational ACL.

Based on the revised stock and recreational ACLs, Amendment 34 would revise the recreational ACT to be 16,914,489 lb (7,672,283 kg) for the 2022-2023 fishing year; 14,645,472 lb (6,643,074 kg) for the 2023-2024 fishing year; 13,098,416 lb (5,941,342 kg) for the 2024-2025 fishing year; 12,015,476 lb (5,450,128 kg) for the 2025-2026 fishing year; and 11,241,947 lb (5,099,261 kg) for the 2026-2027 fishing year and subsequent fishing years.

Atlantic King Mackerel Recreational Bag and Possession

Limits

Amendment 34 would revise the recreational bag and possession limits in the EEZ off the east coast of Florida. The current recreational daily bag limit for Atlantic king mackerel in both Federal and state waters off the east coast of Florida is two fish per person. However, the recreational daily bag limit is three fish per person in the rest of the Gulf of Mexico, South Atlantic, and Mid-Atlantic Federal waters. Fishermen and Mackerel Cobia AP members have requested that the Councils increase the bag limit for Federal waters off of the Florida east coast to three fish per person, to the match bag limit within the rest of the management area. Increasing the bag limit in Federal waters off the east coast of Florida would allow recreational fishermen throughout the South Atlantic Council's management jurisdiction the opportunity to harvest the same amount of Atlantic king mackerel. Additionally, the recreational sector has not been reaching their ACL, and the South Atlantic Council anticipates that an increased recreational ACL combined with an increased bag limit will help increase harvest.

Recreational Atlantic King Mackerel and Spanish Mackerel Landing Fish Intact

Currently, Atlantic king and Spanish mackerel

recreational fishermen must land recreationally harvested fish with the head and fins intact. As described at 50 CFR 622.381(b), commercial Atlantic king and Spanish mackerel fisherman are allowed to land these fish without the head and fins intact (cut-off/damaged) provided the remaining portion of the fish complies with the minimum size limit. The commercial provision for cut-off fish was implemented through Amendment 9 to the CMP FMP (65 FR 16336, March 28, 2000) because of increasing interactions with sharks or barracudas resulting in Atlantic king mackerel and Atlantic Spanish mackerel having their tails bitten off before they could be landed. In response to similar concerns from the recreational sector about interactions with sharks or barracudas resulting in Atlantic king mackerel and Atlantic Spanish mackerel having their tails bitten off before they could be landed, the Councils considered revising the landing fish intact requirements in Amendment 34. The Councils decided that allowing possession of damaged Atlantic king mackerel or Atlantic Spanish mackerel could be expected to minimally increase recreational harvest, while reducing the number of discarded fish.

Amendment 34 would allow cut-off (damaged) Atlantic king mackerel and Atlantic Spanish mackerel

caught under the recreational bag limit and that comply with the minimum size limits to be possessed and offloaded ashore. Additionally, Amendment 34 revises the definition of "damaged fish" to refer to king or Spanish mackerel that are damaged only through natural predation.

Proposed Rule for Amendment 34

A proposed rule to implement Amendment 34 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 34 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The South Atlantic Council has submitted Amendment 34 for Secretarial review, approval, and implementation. Comments on Amendment 34 must be received by *[insert date 60 days after date of publication in the **FEDERAL REGISTER]***. Comments received during the respective comment periods, whether specifically directed to Amendment 34 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove, Amendment 34. All comments received by NMFS on the

amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 24, 2023.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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